

REMARKS

Applicant has carefully reviewed the Application in light of the Office Action mailed July 26, 2007 ("Office Action"). At the time of the final Office Action, Claims 1-33 were pending and rejected in the Application. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

Section 102 Rejection

The Examiner rejects Claims 1, 9, 17, and 25 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,694,396 issued to Salmi (hereinafter "*Salmi*").

Applicant respectfully reminds the Examiner that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.<sup>1</sup> In addition, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claims" and "[t]he elements must be arranged as required by the claim."<sup>2</sup> In regard to inherency of a reference, "[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic."<sup>3</sup> Thus, in relying upon the theory of inherency, an Examiner must provide a basis in fact and/or technical reasoning to support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.<sup>4</sup>

*Salmi* is flawed in that it does not make an initial determination of whether an incoming message includes pushed data. (See page 27-28 of Applicant's Specification for support). *Salmi* is further flawed in that it also fails to discern whether that incoming data is appropriate for a session currently being hosted by the mobile unit. Specifically, Independent Claim 1 recites, "...analyzing the message to determine if it contains pushed data, wherein the pushed data reflects a server initiated data transfer that is based on predetermined criteria; determining, if the message contains pushed data, whether the data is

<sup>1</sup> *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987); MPEP §2131.

<sup>2</sup> *Richardson v. Suzuki Motor Co.*, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 USPQ 2d 1566 (Fed. Cir. 1990); MPEP §2131 (*emphasis added*).

<sup>3</sup> MPEP §2112 (citing *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993) (*emphasis in original*)).

<sup>4</sup> MPEP §2112 (citing *Ex Parte Levy*, 17 USPQ 2d 1461, 1464 (Bd. Pat. at App. and Inter. 1990) (*emphasis in original*)).

appropriate for a session currently being hosted by the mobile unit; and posting the data to the session if the data is appropriate for the session, wherein the determining and posting operations cooperate in order to achieve a filtering function for the mobile unit such that only selected data is posted to the session.”

Turning back now to the former limitation that is missing from *Salmi*, *Salmi* fails to make this initial analysis of the incoming data. At the passage cited by the Examiner for this limitation (e.g., Column 15 generally), there is no disclosure of this step. Additionally, there is no coordination of this data to the instant session being conducted in cases where it is appropriate to do so. Any predefining of attributes (as the Examiner has highlighted in his rejection) is not akin to the real-time decision to post data, where appropriate.

For at least these reasons, Independent Claim 1 is clearly allowable over *Salmi*. In addition, the other Independent Claims (and their respective dependents) should be allowed for similar or analogous reasons. Notice to this effect is respectfully requested.

#### Section 103 Rejections

The Examiner rejects Claims 2-4, 6, 7, 10-12, 14, 15, 18-20, 22, 23, 26-28, 30, 31 and 33 under 35 U.S.C. §103(a) as being unpatentable over *Salmi* in view of U.S. Patent No. 6,119,014 issued to Alperovich et al. (hereinafter “*Alperovich*”). The Examiner rejects Claims 5, 13, 21, 29, and 32 under 35 U.S.C. § 103(a) as being unpatentable over *Salmi* in view of *Alperovich* applied to Claims 4, 12, 20, 28 and 25, and further in view of what is well known in the art. The Examiner rejects Claims 8, 16, 24, and 32 under 35 U.S.C. § 103(a) as being unpatentable over *Salmi* in view of U.S. Patent Publication No. 2001/0041571A1 issued to Yuan (hereinafter “*Yuan*”). These rejections are moot based on the §102 analysis provided above.

Thus, all of the pending claims have been shown to be allowable, as they are patentable over the references of record. Notice to this effect is respectfully requested in the form of a full allowance of these pending claims.

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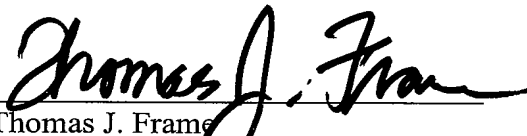
CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

Applicant believes no fee is due. However, if this is not correct, the Commissioner is hereby authorized to charge any additional amount required or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact Thomas J. Frame at 214.953.6675.

Respectfully submitted,  
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Attorneys for Applicant

  
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